

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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LAWRENCE J. LAPINSKY,

Civil No. 10-4088 (PAM/SRN)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

ROBYN WOJCIECHOWSKI,  
Jail Administrator,

Respondent.

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The above-named Petitioner commenced this action by filing an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Docket No. 1.) The matter has been referred to this Court for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this action be dismissed without prejudice.

Shortly after Petitioner commenced this action, the Court reviewed his petition, and found reason to doubt that Petitioner was in custody when the petition was filed. Based on that assessment, the Court determined that this action might have to be summarily dismissed for lack of jurisdiction. Therefore, the Court directed Petitioner to file a memorandum and affidavit showing that he was in custody when he filed this action, and that this case should not be dismissed for lack of jurisdiction. (Order dated October 14, 2010; [Docket No. 9].) Petitioner was expressly informed that if he did not file an adequate response to the Court's order, he would be deemed to have abandoned this action, and it would be recommended that the case be summarily dismissed pursuant to Fed. R. Civ. P. 41(b).

The deadline for complying with the Court's prior order in this matter has now expired, and Petitioner has not filed any response to that order, nor has he offered any excuse for his failure to do so. In fact, Petitioner has not communicated with the Court at all since he filed his original habeas corpus petition.

Therefore, it is now recommended, in accordance with the Court's prior order in this matter, that Petitioner be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496, 497 (8<sup>th</sup> Cir. 2008) (unpublished opinion) (“[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order”); Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (federal court has inherent authority to “manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases”).

Having determined that this action should be dismissed pursuant to Rule 41(b), it is further recommended that Petitioner's various collateral motions – i.e., (i) his application for leave to proceed in forma pauperis, (Docket No. 2), (ii) his motion for appointment of counsel, (Docket No. 3), and (iii) his “Motion for Release from Custody,” (Docket No. 5) – be summarily denied.

#### RECOMMENDATION

Based upon the above, and upon all the records and proceedings herein,

#### **IT IS HEREBY RECOMMENDED that:**

1. Petitioner's habeas corpus petition, (Docket No. 1), be **DENIED**;
2. Petitioner's application for leave to proceed in forma pauperis, (Docket No. 2), be **DENIED**;

3. Petitioner's motion for appointment of counsel, (Docket No. 3), be **DENIED**;
4. Petitioner's "Motion for Release from Custody," (Docket No. 5), be **DENIED**; and
5. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: December 1, 2010

s/ Susan Richard Nelson  
SUSAN RICHARD NELSON  
United States Magistrate Judge

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **December 16, 2010** a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.